

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____ DEPUTY

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CIVIL ACTION NO. _____

GRACIE LOPEZ,

Plaintiff,

v.

WOLPOFF & ABRAMSON, LLP and
LVNV FUNDING LLC,

Defendants.

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NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. This suit was originally filed on June 9, 2008, in the 25th Judicial District Court of Guadalupe County, Texas. Defendant Wolpoff & Abramson, LLP was served on June 11, 2008. Defendant LVNV Funding LLC was served on June 11, 2008.

2. Removal is based upon federal question jurisdiction. 28 U.S.C. § 1331. Although Plaintiff's Original Petition does not cite to a single federal statute (nor any state statute for that matter), it makes the following assertions which invoke federal law:

- a. Paragraph 11 asserts that the defendants sent communications to consumers in Texas "which overshadowed or contradicted the required validation notice." Texas law does not require a "validation notice," nor does it prohibit overshadowing or

contradicting a validation notice. The requirement of a validation notice and the rule against overshadowing same arise under 15 U.S.C. § 1692g, one of the provisions of the Fair Debt Collection Practices Act ("FDCPA").

- b. Paragraph 13 of Plaintiff's Original Petition alleges that the defendants communicated, in connection with the collection of a consumer debt, with someone other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. Such a claim does not arise under state law. It arises under 15 U.S.C. § 1692c(b);
- c. Plaintiff's Original Petition states a claim for statutory damages. Plaintiff has not invoked any portion of the Texas Debt Collection Act which would allow for a recovery of statutory damages; however, the portions of the FDCPA that Plaintiff has invoked would provide for a recovery of statutory damages to a prevailing consumer.
- d. Plaintiff's counsel has filed a virtually identical suit in a different state court captioned *Guillermo Garcia v. LVNV Funding LLC, Linebarger, Goggan, Blair & Sampson LLP, Lori Robertson, Nikki Rambo, and Leslie Breeland*, Cause No. D-1-GN-08-002003 in the 261st District Court of Travis County, Texas. A true copy of the Original Petition in that case is attached hereto

as Exhibit C. In that Petition (unlike the Petition in this case) Plaintiff's counsel cited to the specific statutes to which his client's statutory claims pertained, and those claims arise under the FDCPA and not any state statute.

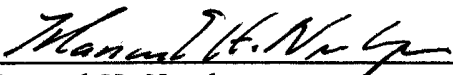
3. It is clear that Plaintiff's Original Petition asserts causes of action arising under the FDCPA; therefore, this Court has original federal question jurisdiction pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction of the additional state law claims asserted in Plaintiff's Original Petition pursuant to 28 U.S.C. § 1367.

4. This action is removable to this Court pursuant to 28 U.S.C. § 1441(a). Defendants hereby jointly remove this action to the United States District Court for the Western District of Texas, Austin Division, as provided for by 28 U.S.C. § 1446.

5. Defendants have attached hereto as Exhibit A a true copy of all process, pleadings, and papers served upon them in this action.


6. Defendants have filed a copy of this Notice with the District Clerk of Guadalupe County, Texas. Attached hereto as Exhibit B is a copy of the Notice of Removal filed with the District Clerk of Guadalupe County, Texas in the original state court action.

Respectfully submitted,



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ATTORNEY FOR DEFENDANT
LVNV FUNDING LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2008, a true and complete copy of the foregoing was served in accordance with TEX. R. CIV. P. 21a upon Mr. Bryan Powers, Attorney for Plaintiff, P.O. Box 1685 , Canyon Lake, TX, 78133.


Manuel H. Newburger